IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

Crl.MC.No. 2200 of 2007()

ST.729/2007 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR
CRIME NO. 820/2003 of KODUNGALLOOR POLICE STATION

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PETITIONER: 2ND ACCUSED

VISWANATHAN, S/O.VELLAYUDHEN,
VALLUPARAMBIL HOUSE, EAST KODALLY DESOM,
MATTATHUR VILLAGE, THRISSUR.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENTS: COMPLAINANT

THE SUB INSPECTOR OF POLICE,
KODUNGALLOOR POLICE STATION,
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV. SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.2200 Of 2007

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Dated this the 9th day of July, 2007

ORDER

Petitioner, the 2nd accused faces indictment in a case registered in the year 2004. At present the allegations raised are only once under the K.P.Act., submits the learned counsel for the petitioner. The co-accused/ 1st accused has found not guilty and acquitted, submits the learned counsel for the petitioner. The petitioner did not appear before the learned Magistrate and in these circumstances, the learned Magistrate has issued coercive processes to compel the appearance of the petitioner. According to the petitioner he is absolutely innocent. His absence was not wilful. The summons was not served on him at all. The petitioner is willing to co-operate with the Court for the expeditious disposal of the case against him. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances, appropriate directions may be issued under section 438 Cr.P.C and/or 482 Cr.P.C, prays the learned counsel for the petitioner.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C

can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE